

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2694 of 1997

with

FIRST APPEAL NO. 2695 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

AND

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

EXECUTIVE ENGINEER

Versus

HIRABHAI KEHARBHAI VALON

Appearance:

MR HS MUNSHAW for Appellant

MR GM AMIN for Respondent No. 1

HARSHA DEVANI, AGP for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 04/03/98

ORAL COMMON JUDGEMENT [PER : Y.B.BHATT, J]

Appeals admitted. Mr. G.M. Amin waives services on behalf of opponent no.1- original claimant.

Ms. Harsha Devani, AGP appears and waives service on behalf of respondent no.2 - State of Gujarat.

At the joint request of the ld. Counsel for the respective parties, these appeals are taken up for final hearing today.

These are appeals under Sec.54 of the Land Acq. Act read with Sec.96 of the C.P.Code filed by the Acquiring Body, challenging the common judgment and awards passed by the Reference Court under Sec.18 of the said Act.

The lands in question were acquired at the instance of the Acquiring Body for the construction of a Rest House and Staff Quarters in village Ratanpar, Ta: Vadhawan, District : Surendranagar. The relevant notification under Sec.4 was issued on 6th September 1990. The acquisition pertains to 2696 sq.mts. of part of Revenue Survey No. 200 of village Ratanpur in one Land Reference Case and 2900 sq.mts. of the same revenue survey number in the second Land Reference Case.

The Land Acq. Officer in his award under Sec.11 made an offer of Rs. 35/ per sq.mt., against which the claimants preferred reference application under Sec.18. The claim put forward by the land owners before the Reference court was at the rate of Rs. 300/ per sq.mt., whereas the Reference Court has determined the market value of both the lands in question at Rs. 100/ per sq.mt.

It is this valuation determined by the Reference Court which has been challenged by the Acquiring Body in the present appeals before us.

We have been taken through the evidence on record by the ld. Counsel for the respective parties in considerable detail. We have also heard the ld. Counsel in respect of their submissions and contentions in detail. Ultimately, as a result of this exercise, it was submitted on the basis of a consensus that if the Court comes to a conclusion that the market value as determined by the Reference Court was excessive and if Court comes to a conclusion that some reduction is justifiable on the basis of the evidence on record, the ld. Counsel for the respective parties would then accept the market value as determined by this Court, without insisting upon the detailed reasons for such valuation.

As aforesaid, we have examined the evidence with the assistance of the ld. Counsel for the respective parties in considerable detail. On the basis of the

evidence, we are satisfied that the market value at Rs. 100/ per sq.mt. as determined by the Reference Court is certainly on the higher side. This slight excess is not completely of an insignificant nature, which this Court can either ignore or accept as falling within the normal parameters of " permissible latitude ". We are also conscious that the determination of the market value on the basis of evidence led in Land Reference Cases read in consonance with the principles laid down in Sec.23 of the said Act, cannot result in a precise determination, as if the process of determination was a mathematical exercise.

However, we have broadly kept in mind the relevant factors which have weighed with the Reference Court as also those factors which have been placed before us. In particular, and without being exhaustive, we may only mention that exh.48 to 52 relied upon by the appellant Acquiring Body cannot furnish an appropriate basis for determination of the market value, inasmuch as these sale instances are represented by the sale-deeds merely placed on record and the contents thereof have not been proved according to the rules of evidence, particularly since the parties to the documents have not been examined.

We have also been referred to exh.53 which is a map of the site of the acquired land and have examined the location and the situation in the context of surrounding land and relevant impact on development in the surrounding area. We have also taken into consideration the evidence led by the claimants and the documents produced and proved by them. This evidence, no doubt indicates a land value higher than that determined by the Reference Court, but without giving sufficient and adequate weightage to the fact that these instances pertain to sale of land of relevantly small plots of land.

Giving due weightage to the smallness of the plots which are the subject matter of the claimants' evidence, and also looking to the fact that the Reference Court itself observed to the effect that the Land Acq. Officer ought to have awarded or could have awarded at the rate of Rs. 125/ per sq.mt., it is deemed proper that this figure should be scaled down. We do not find any logic and/or justification behind this observation except to note that it is in this process of scaling down that the Reference Court appears to have erred in favour of the land holder.

In view of the totality of the evidence on record, and on the basis of submissions made by the ld.

Counsel for the respective parties thereon, we find and accordingly hold that the lands under acquisition should bear the market value of Rs. 90/ per sq.mt. Both these appeals would therefore partly succeed and are partly allowed with no orders as to costs. The judgment and awards of the Reference Court would stand modified only to the aforesaid extent. Decree accordingly.

We note that under the earlier interim order, part of the compensation (under the impugned awards) with proportionate costs and interest was directed to be deposited by the appellants before the Reference Court. The appellants shall now deposit the requisite balance of the amount so as to comply with the present decree within three months from today.
Direct Service permitted.

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